Pacific County
HEARINGS EXAMINER

May 6th, 2024

Cynthia Hayward
P.O. Box 209
Oysterville, WA 98641

RE: ODRB Major Review, Application No. P2400251 - APPROVED
Tax Parcel ID No.: 76014006003

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the April 24th, 2024 hearing to approve the above referenced application. Enclosed you find a copy of the decision that includes the Findings of Fact and Conclusions of Law. The complete case file is available for review Monday through Thursday, 7:30 a.m. - 12:00 p.m. / 1:00 p.m. – 3:00 p.m., at our Long Beach office. Please contact me to set up an appointment to ensure that we are able to assist you.

The Hearings Examiner decision is final and conclusive unless an appeal is filed in accordance with RCW 36.70C. If no appeal is filed within the 21-day appeal period, the project is allowed to proceed once all other permits have been obtained.

The enclosed invoice is a result of the hearing as determined by the Hearing Examiner. If you have permits pending as a result of this hearing, they cannot be issued until the balance is paid. Any outstanding balance will be forwarded to collections if not paid within 30 days from the date listed above.

If you have any questions, please do not hesitate to contact me at 360-875-9356 or via email zjohnson@co.pacific.wa.us.

Sincerely,

Zane Johnson
Planner
Enclosure

cc: Parties of Record
Parcel File

May 3, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400251

Subject property: Parcel # 76014006003, 3505 Clark Street, Oysterville

Applicant: Cynthia Hayward, owner

Hearing: April 24, 2024, 7013 Sandridge Road, Long Beach, Washington, and over the internet via a Zoom meeting.

Witnesses:

Zane Johnson, Senior Planner, Pacific County Department of Community Development (DCD)
Cynthia Hayward
Tom Leinweber
Kathryn Freshley

Physical Evidence

DCD application packet, including supplementary documents such as the application and elevation views.

Email from Greg Rogers, Bradley Huson, and Shelby Mooney, Filed April 23, 2024

Aerial view of Oysterville depicting the current location of the structures in relation to the proposed building site, downloaded by the hearing examiner and appended to the decision.

Summary of Application and Testimony

Cynthia Hayward applied to move an existing single-family residence and a detached garage from one part of the Oysterville Historic District to another. The house is currently located at 33880 Territory Road and was constructed in 2014 subject to the Oysterville Design Review approval. The applicant proposes to move these to 3505 Clark Street. The construction is subject to Pacific County's Zoning Ordinance's Oysterville Design Review and this hearing.

Greg Rogers, Bradley Huson, and Shelby Mooney's letter accused Ms. Hayward of felling significantly large trees in violation of County ordinance 184 and advocated denying the application until the alleged violation was remedied.

Zane Johnson testified, repeating the summary of the application and his conclusions, and adopted the report and its accompanying documents into the record. He also addressed the accusations of illegal tree cutting, saying that this landscaping was in fact permitted during an administrative review of the building site preparation prior to the action.

Tom Leinweber testified for himself and on behalf of Kathryn Freshley in support of this application. He confirmed to this hearing examiner that the current application, #P2400251, was a companion to their application, #2400099. Mr. Leinweber and Ms. Freshley had their application approved to move the structures currently at 3505 Clark Street to an unimproved lot in south-west Oysterville. With those structures gone, Ms. Hayward could now if permitted move her current house to the cleared property at 3505 Clark.

This hearing examiner questioned whether it was allowed to mitigate impacts to the wetland buffer on the affected site by extending that buffer adjacent to an intrusion into the buffer, and questioned why there was not an accompanying CARL Ordinance 193 hearing. Mr. Johnson testified that buffer averaging was allowed and that it was permitted by an administrative decision during the aforementioned site review.

This hearing examiner also notified the hearing of the aerial map as a tool to understand the application and stated that it would be appended to the decision to be made part of the record.

Findings of Fact

Cynthia Hayward has applied to move a single-family residence and detached garage from 33880 Territory Road three blocks north to 3505 Clark Street, parcel #76014006003. Both sites are in the Oysterville Historic District, as described in Ordinance 194 §20, and in Shoreline Area B as delineated in the map found on page 8 of the Guidelines. This house and garage were constructed in 2014 with Oysterville Design Review approval in 2013. Ms. Hayward proposes to remove and disassemble the existing brick chimney and breezeway. After the move, the chimney and breezeway would be restored to look as they do now.

Zane Johnson had the notice of application and hearing published in *The Chinook Observer*, the County's newspaper of record, on April 10, 2024. On or before that date he mailed notice to all recorded property owners within 300' feet of the subject property and he had posted on or near the site a sign notifying the public about this request and hearing.

The final building site consists of six lots comprising the parcel totaling over an acre. The applicant owns other surrounding lots including the two between the building site and Clark Street, from which the existing structures will be moved. The property is flat with a gentle slope west to a Category III wetland buffer of 110 feet.

The applicant has cleared trees in preparation for the move as approved by an administrative hearing.

The eastern boundary of the subject parcel appears to be an unimproved public right of way extending north from the existing Main Street. While the applicant's materials call this right of way, "Main Street," there is in fact no street there for the County to maintain. The eastern, main face of the house would look out over what is at best an unimproved alley.

Conclusions of Law

The proposed construction project is in the Oysterville Historic District. Ordinance 194 §20 applies. Section 20(B) states, "The Oysterville design review guidelines shall be utilized as a regulatory document to determine the suitability of development within the authority of this Section." Section 20(F) requires a public hearing for this major construction. Section 20(G) states, "The Hearings Examiner, in considering the appropriateness of any development activity, shall base all decisions on this Section and the design review guidelines. The Hearings Examiner shall consider the historical and architectural value and significance, architectural style, general design, arrangement, texture, material, and color of the structure in question or its appurtenant fixtures including signs, the relationship of such features to similar features of other buildings with Oysterville, and the position of such buildings."

The Oysterville Design Guidelines (provided in the DCD review packet) state that General and New Guidelines apply for "New primary structure" and "Exterior alteration of a 'non-historic' building," and that the general guidelines and "other" apply for the site work. (Grid, p. iii) The proposed construction is a mix of both new and old "non-historic" building. The original "non-historic" building has already been approved by the Design Review Board. While in some respects, the structures are not "new construction," as they sit now, they will be moved and thus constructed on the Clark Street site – making the "new construction" standards applicable. The construction occurs but with far fewer pieces – those moved from Territorial.

General standard #1 requires that established tree stands are to be respected. "Tree stand" is undefined by the ordinance. The Merriam-Webster dictionary defines "stand" as a noun, "9. a group of plants growing in a continuous area." Mr. Rogers, Mr. Huson, and Shelby Mooney's letter is well taken that there have been significant trees removed, and thus not respected. However there is nothing in the evidence to say whether the trees were together in one continuous area or not. There is no evidence whether the administrative approval to remove the trees considered the Oysterville Design guidelines or not. There is insufficient evidence to find that the tree removal was a violation of this General Standard. It appears to be a flaw of the procedure in not requiring all of the necessary permits to be obtained before any site work.

General standard #2 requires that the grassy character of the shoreline be respected and "Where new construction is permitted adjacent to wetlands, building should be conceived such that they minimize the alterations to the character of the transitions to wetlands." The state of the property from which the structures to be removed is not among the subjects of this decision. The structures to be removed are adjacent to the Willapa Bay shoreline. There is nothing in this application or the approval process concerning the act of the removal or the state of that site following removal and their impacts on the grassy character of the shoreline. The design review process focuses entirely on the new construction, with nothing in the standards concerning deconstruction of the old. This may be a flaw in the Oysterville Design Guidelines.

To the extent that the new construction on the 3505 Clark property impacts the adjacent wetland, the buildings do in fact minimize the alterations to the character of the transition to the wetland. Pacific County Ordinance 193 concerning wetlands is much more restrictive than are the Oysterville Design Guidelines and according to County Senior Planner Zane Johnson, a credible witness, this application has met those wetland guidelines.

General standard #3 requires that the project protects views to significant historic and natural features. The proposed construction is at the farthest north of the Oysterville Historic District. The only historic features that could be viewed from the subject property are to the east and south, and there are no publicly available points of view from the west and north. The project will not block any view of any historic structure or natural feature.

General standard #4 requires that the new construction respect historic residential settlement patterns. "Preserve the historic street patterns, including preservation of lanes." This project would change no historic street pattern. There will be no change to the historic street pattern. If there were a lane to be built to the east side of the subject parcel it would travel north from the existing Main Street. "Protect neighborhood boundaries by recognizing their difference in character in the guidelines for individual neighborhoods." The existing structures to be moved *from* the subject parcel (P2400099) were already reviewed and permitted as new construction and the existing structures to be moved *to* the subject parcel have been reviewed and permitted. One new set of structures replaces another new set of structures. The proposal respects the character of the Core Area as much as the complex of buildings before the move.

General standard #5 requires that the buildings be oriented similarly to that found historically. "Primary building entrances are encouraged to face the street." The current set of structures does not face the street either at its current location or at the location to which it would be moved. "Encouraged" is hortatory rather than mandatory. "Primary ridge lines of roofs are encouraged to parallel to the street." (sic) There is no definition of "primary ridge line." The current structure has a

garage/guest house with a roof ridgeline parallel to Territorial Street, and a house with two taller ridgelines parallel to Territorial, but all are linked by a lower ridgeline running perpendicular to Territorial. The garage is next to Territorial and if moved it would be next to Clark Street, behind a lawn. The current building is not oriented in a manner similar to that found historically, and if moved would not be oriented in a manner similar to that found historically. Before the common usage of automobiles, people would not put their carriage house in between the residence and the street, but hide it in back. After the introduction of automobiles, garages were put in back of the house or were a secondary structure to the side of the residence. Eventually garages were attached and later incorporated into the 'face' of the building to the street. It was only with the design of suburban houses with multi-car garages that the garage itself became a major element in the face of the building to the street. This complex of building fails General Standard #5, but this failure does not preclude granting the application. First, General Standard #5 "encourages" this standard rather than requires it. Second, the existing house would violate the standard whether it was moved or not. There is no net gain for the community standard compliance if the application were denied.

General standard #6 requires that building setbacks be similar to historic patterns. This standard requires buildings to be set "relatively close" to the street except in wooded areas A and D. The structures in question are located in area B and would be moved to area B. There is no quantitative measure as to what "relatively close" means. In fact, the plan calls for the house to be moved to a site that is behind an existing residence that would be moved out. The address given for the proposed move of the residence is Clark, rather than Main Street. The Development Site Plan (p. 17 of 91) states that the house would be 31.5 feet from Main Street, but at this location Main is not a street but unimproved land. There is no evidence in the record as to whether the eastern border of the subject property is County land or County easement. It appears to be a street in name only. But because of the ambiguities of the term "relatively close" and whether this is a street despite being unpaved, untended, and untraveled, the application shall not denied by this standard.

New Construction standard #1 requires that the building heights be similar to those of the other historic buildings, generally 18 to 27 feet to the top of the roof for a residence. The maximum building height of the plan is 21' and so the design fulfills this standard.

New Construction standard #2 requires that the building widths be similar to other historic residences, with a typical width of the primary façade to be 30 to 45 feet and not to exceed 45. The DCD report states, "The primary façade of the residence and garage are broken up into modules, each of which is less than 20' in width, thereby limiting the mass of the structure." The building elevation drawings give a scale and measurement of the height of the primary ridgeline at 21', they do not give the total distance of the building from east to west. I printed a copy of the elevation drawings and on this paper measured the height of the illustration of the building at 1 9/16",

and the length of the building on the drawing (not the breezeway or the garage) as 4 1/8." This makes me estimate the width of the primary façade to be slightly over 55' – way over the mandatory 45' width.

It is irrelevant whether the façade is broken into modules are not. It is remarkable that this house was approved back in 2013, but perhaps it is because of the ambiguity of the term, "façade." Is the façade of this building the garage? If so, the structure does not conform to the standard by having a garage as its face. Is the façade of this building the face of the building to what would be Main Street? If so, the length is beyond the standard. However this apparent nonconformance to standard #2 does not prevent the application from being granted. If the application were denied, the structures would legally sit where they are. There is no net gain in the design of Oysterville architecture in denying the request. The house would be equally non-compliant wherever it sat in Oysterville.

New Construction standard #3 requires that new buildings be distinguishable stylistically from historic structures to protect their integrity. This is the most troublesome of the design standards. Any new construction needs to mimic historic designs so as to conform to the general architectural aesthetic of this historic district, but not so close of an imitation that it could be confused for an actual historic home. Close, but not too close. How could this be applied systematically?

The proposal takes an existing set of structures and moves them to a new location. The original buildings were permitted. The design of the house is in fact harmonious with the architectural styles of the historic buildings of Oysterville, and no one would confuse this set of buildings for being any older than 21st Century. This fulfills the requirement of similarity to historic Oysterville buildings while being stylistically different enough that no one would confuse it for a historic building.

New Construction standard #4 requires that building forms should be similar to those seen historically in residential structures. The standard explains, "This was typically a rectangular primary form, with a symmetrical gable roof; subordinate rectangular forms were often attached, creating a moderately complex form overall. Shapes typical of the area should be incorporated into new designs. Subordinate additions were often found historically and are encouraged on new construction." The building form is dissimilar from historic residential structures. This building form has two 'primary' rectangular forms rather than one, and these are joined by a secondary, subordinate, rectangular form. Historically, subordinate rectangular forms were attached to the side of one sole primary form – not between two primary forms. This construction does not meet the standard, however this is immaterial for the reasons given above. The design is not so much "grandfathered" in, but is noncompliant where it legally sits now. It makes no difference whether it is noncompliant on Territory Road or noncompliant on Clark Street.

New Construction standard #5 requires that the textures of exterior building materials be similar to historic materials. The house currently has board and batten siding similar to historic uses nearby.

New Construction standard #6 was removed when Ordinance 194 supplanted Ordinance 184.

New Construction standard #7 requires the ratio of window to wall to be similar to historic residence primary façades. The proposed design has a window to wall ratio similar to its historic neighbors.

New Construction standard #8 requires that porches "shall" be used to define primary entrances and that the porch should be oriented to the street. Despite what the application states, there is no porch on this building – not in the elevation drawings or in the photographs and thus the design fails standard #8, however this design was already approved in 2013. Perhaps the applicant refers to the enclosed room on what is now the east side of the building. This would become the north side once the structures are moved, making the "primary entrance" the side farthest from Clark Street and perpendicular to Main Street. Again, the current design fails a standard, but is irrelevant for the reasons stated above. There is no net gain in denying the move of a nonconforming structure.

New Construction standard #9 requires that

> Roofs shall be similar in scale to those of historic residences.
> The primary ridge line is encouraged to be parallel to the street.
> The range of historic ridge lines is from 30 to 45 feet long.
> The primary ridge line of new buildings shall not exceed 45 feet without a change of height.

"Encouraged" is not mandatory, but hortatory. As viewed from above (not an elevation view) there is no primary ridgeline. There are two tallest ridgelines of the nearly symmetric rectangular modules joined by a lower ridgeline of the rectangle joining the two primary structures. All ridgelines are either parallel or perpendicular to both Clark and Main Streets. No ridgeline is greater than 45 feet. The structure is compliant with standard # 9.

New Construction standard #10 requires that roofs be similar in form to historic residences in that they should be gabled with a roof pitch similar to the 1:1 typical to historic buildings. The structures have gabled roofs with the required pitch. The project is compliant with standard #10.

New Construction standard #11 encourages smooth-sawn wood shingles on roofs in area C. The existing structures use smooth-sawn cedar shingles.

New Construction standard #12 requires that doors and windows be similar in scale and proportion to historic residences in Oysterville. It requires that window frames and sashes be wood or look like wood in the core area. It also requires that windows have divisions similar to historic models. The doors and windows of the structure are similar in scale and proportion to the historic buildings of Oysterville and made of wood with divisions similar to historic models.

New Construction standard #13 requires that chimneys be subordinate to the roof form and made of brick, except that metal pipe stacks may be used if located on the rear roof. The Design Guidelines do not elaborate on what "subordinate to the roof form" means. The chimney of the current house is reasonably subordinate to the roof form, and the applicant states that she will install a similar chimney after the structures are moved.

New Construction standard #14 forbids ornamentation unless it is similar to that found on other historic buildings. The proposal has no ornamental trim.

New Construction standard #15 encourages simple color schemes with one base color for the building and one or two accent colors, with all to be similar to those used historically. The existing design uses stained board and batten siding similar to historic designs and window trim color the same as the Oysterville Church.

New Construction standard #16 states:

> Secondary structures are encouraged.
> They should be used to reduce the mass of the primary building.
> Secondary structures should be set back from the primary elevation of the main structure.
> They may be connected by walkways to the main building.
> These buildings shall be smaller than the primary structure.

The existing structure has a detached smaller garage connected by a breezeway to the primary structure, reducing the mass from what it would be as an attached garage/guest house. The project design conforms to standard #16.

There are a few Other Guidelines applicable to this construction project.

Other standard #1 states that, "The use of plantings is encouraged in yards." Traditional flower gardens are encouraged. Street trees are also encouraged. The applicant will retain the existing gardens, but the application does not describe those gardens as 'traditional flower.' The applicant intends to plant trees along Clark Street. The design guidelines are deficient in terms of historic landscaping. Historic street trees are monumental, large pillars of trees. This design standard could countenance the planting of multiple conifers as a hedge, blocking the view of the house from the street. The project complies with Other standard #1.

Other standard 2 requires that significant trees be preserved. Apparently the applicant felled significant trees with DCD approval, before an Oysterville Design Review. Both the application and the DCD report state, "Some hazardous or fallen pine and spruce that have grown up in the Shoreline **may be** removed. . ." It is ambiguous whether these are the trees that **have been** removed. This seems to be a failure on the part of the County to allow such action before a Design Review. Because the fault is not that of the applicant and there are no remedies available in the situation of an Oysterville Design Review, this Standard will not be part of this Oysterville Design Review of the application. The subject property is far enough away from the Willapa Bay shoreline that Ordinance 193 does not apply, but for some reason the applicant and DCD use the proximity to the shoreline to justify removing the trees.

Other standard 3, 4, 5, 6, 7, 8, and 9 are inapplicable.

Other standard 10 encourages picket fences along the street. The applicant stated, "We intend eventually to install picket fencing along Clark St."

Other standard 11 requires fences to be aligned with the street, to be between 3 and 4 feet tall, not chain link, and natural wood. The applicant stated that she anticipates conforming with this requirement when the fencing is installed.

Other standards 12 and 13 are inapplicable.

Other standard 14 requires that automobile parking be unobtrusive, considerably set back from the street preferred in the rear, with garages set perpendicular to the street. The proposed design sites the parking area behind the primary residence and to the west. The garage doors would be perpendicular to Clark Street and hidden from Main Street. There is no definition of "considerably set back from the street," though this design appears to comply with the intent of this standard.

Other standard 15 requires that driveways and parking aprons be minimally intrusive visually, that driveways should not be in front yards and discouraging concrete in favor of gravel. The applicant will use gravel. Though the driveway does in fact come in on the front yard from Main Street it does not come in from Clark Street. Main Street is no public thoroughfare.

Finally, Other standard 16 requires that walkways to the buildings should be subordinate in character using gravel, crushed shells, wooden boardwalks, or concrete in a muted color. The applicant stated that she will use no hardscape walkways to building entrances.

The County complied in all respects with public notification requirements.

The proposal is within the Restricted Residential R-1 designation and the General Rural comprehensive plan district, but these have no legal impact. There are no

legal issues implicated by the Shoreline Management Master Program. Its conformance with the Critical Areas and Resource Lands Ordinance has already been addressed administratively.

All findings of fact that are also conclusions of law shall be treated as such. All conclusions of law that are findings of fact shall be treated as such.

The applicant has proved by a preponderance of the evidence that the application materially conforms the requirements of Ordinance 194 §20 and so the applicant is granted subject to the conditions noted below.

Conclusion

The application is approved with the conditions that:

1. The development complies with all other county and state regulations;

2. The applicants receive all necessary permits prior to construction;

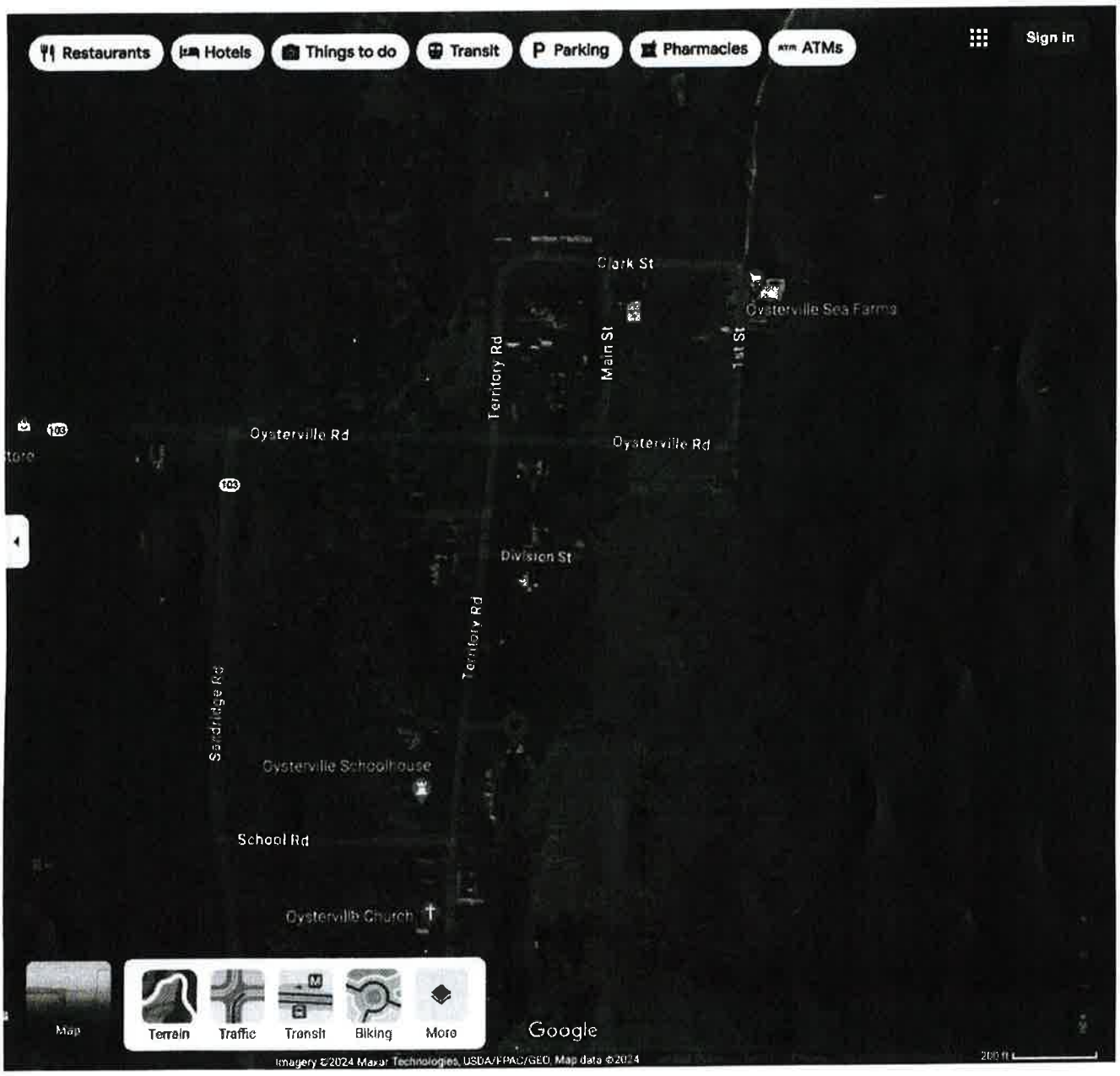
3. The structure shall be consistent with the Oysterville Design Guidelines in design and materials.

The permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-24-130, as amended, or until all review proceedings initiated within 21 days from the date of such filings have been terminated, except as provided in RCW 900.58.140(5)(c) and (d).

Please note that any appeal of this decision shall comply with the requirements of RCW 36.70C. The deadline for filing any appeal is both swift and definite. If you have any questions concerning this strict deadline or the appeals process, please consult an attorney.

Signed this 3rd day of May, 2024.

Eric Weston, Hearings Examiner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